

RESERVED ON : 07..06..2017

DELIVERED ON: 22..06..2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.Appeal No.52 of 2010

State represented by
The Deputy Superintendent of Police
Crime Branch CID
Chennai- 2 .. Appellant/Complainant

vs

1. C. Senthilkumar
2. Suyambulingam
3. Willson Sundaraj
4. Kannan Babu .. Respondents/ Accused 1 to 4
5.

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C.,
against the order of the Additional District and Sessions Judge
Fast Track Court No.III, Chennai in S.C.No.123 of 2005 dated
23.02.2006 acquitting the accused.

For Appellant : Mr.E.Raja
Additional Public Prosecutor

For Respondents : Mr. R.Sankarasubbu

J U D G M E N T

This appeal has been preferred by the appellant/state challenging the judgment of acquittal passed against the respondents on 23.02.2006 in S.C.No.123 of 2005 on the file of the Additional District and Sessions Judge, Fast Track Court No. III, Chennai.

2. Prosecution case succinctly stated is as follows:-

(a) P.W.1 is the owner of Nallamani Lodge. P.W.2 and P.W.3 are the employee the said lodge. On 07.5.2002, when P.W.1 was in the lodge, A4 met him and handed over Ex.P1 letter written by A1 and demanded Rs.20,00,000/- to meet out the expenditure for his murder case. PW.1 asked him to come on the next day, after receiving the letter Ex.P1. A3 and A4 visited P.W.1 on the the next day and on that day, they were asked to come inside the lodge, but they went saying that they would come on the next day. Again on 09.5.2002, A3 and A4 went to P.W.1's lodge at 5.30 p.m and demanded money and at that time, P.W.1 informed that he has no money. A3 and A4 annoyed, threatened P.W.1 and attempted to murder him. On hearing the sound, P.W.2 and P.W.3 rushed to rescue P.W.1

along with other staff of the lodge. At that time, A3 and A4 were caught hold by them and handed over to police and also gave Ex.P2 First Information Report, besides M.O.1. From the police station, he has also referred to the Government hospital.

(b) P.W.13, received the compliant Ex.P2 and registered the Case in Crime No.473 of 2002 for the offence under Section 341, 384, 307 and 506 (2) IPC under Ex.P16. P.W.15, Inspector of Police, took the investigation and arrested A3 and A4 and recorded their confession statement in the presence of witnesses. P.W.12 is the Medical Officer, who examined P.W.1 on 09.5.2002 at 10.50 p.m. and treated him as Out Patient and issued Accident Register copy Ex.P5. P.W.15 recovered letters said to have been written by the accused Senthilkumar from the pocket of accused Wilson Ex.P24 under form 95. P.W.15 also prepared the observation mahazar Ex.P25, the rough sketch Ex.P26 in the presence of witnesses. Similarly, he has also remanded A3 and A4 to judicial custody.

(c) Thereafter, the case was transferred to the CBCID Wing for further investigation. P.W.16 took up further investigation on 14.5.2002. P.W.16 by continuing the investigation on 30.5.2002, examined the witness Selvaraj, P.W.7, who was working in STD booth at the relevant time. P.W.14, Finger Print Expert, after comparison, submitted report Exs.P20 and P21. P.W.16, Deputy Superintendent of Police, CBCID, as per the direction of the superiors, took up the investigation and he went to the place of occurrence and examined witnesses and recorded their statement on 20.5.2002. After recording statement of other witnesses, he laid a charge sheet under Section 120 (b), 307, 450, 451, 384 and 506(2) read with Section 109 IPC. As the respondents/accused pleaded not guilty, the case was posted for trial.

3. Before the Court below, 16 witnesses were examined and Exs.P.1 to P.31 were marked on the side of the prosecution, apart from marking material object, M.O1. On the side of the respondents / accused, 4 witness were examined and Exs.D1 to D11 were marked.

4. Even though various charges were levelled against the respondents 1 and 2 /accused 1 and 2 under Sections 120-B r/w 109, 450, 451, read with 120 (b) read with 109, 506 (2) read with 120(B), 109, 307 read with 120 (B), 109, 384 read with 120 (b) and 109 IPC and various charges were levelled against the respondents 3 and 4 /accused 3 and 4 under Sections 120-B r/w 109, 450, 451, 506, 307, 384 IPC, the Trial Court, after considering oral and documentary evidence, had acquitted the accused from all the charges levelled against them. Challenging the same, the present appeal came to be filed.

5. The learned Additional Public Prosecutor appearing for the appellant would submit that the Trial Court has not considered the evidence of P.W.1 to 3, who has clearly spoken about the specific overt act exercised by A3 and A4. The learned Additional Public Prosecutor would further submit that the letters seized from A3 and A4 and also from other accused, clearly established the fact that they demanded ransom from P.W.1. It is submitted that the evidence available on record would clearly show that the alleged letters were written by one and the same

person. Hence, it is the submission of the learned Additional Public Prosecutor that the Trial Court has not appreciated the evidence properly. Therefore, the learned Additional Public Prosecutor prays for allowing the Criminal appeal.

6. A2 said to have died which is not disputed by prosecution. However, no materials, whatsoever, have been placed before this Court to prove the death of A2.

7. The learned counsel for the respondents/accused 3 and 4 submitted that the entire case is foisted one and that the Trial Court, after appreciating the entire evidence in a proper perspective, had rightly acquitted the respondents. The learned counsel for the respondents/accused 3 and 4 further submitted that the manner in which FIR was filed is attached with serious artificiality. Further, no injury, whatsoever found on the defacto complainant. It is submitted that since Ex.P1 is the mere letter said to have been written by A1, the same would not be treated as evidence. All these facts clearly show that the case is foisted against the accused with false motive. It is further submitted that

though the prosecution has filed the charge sheet on the ground that A1 and A2 were in custody with regard to some other case and for which they wanted money and hence, they sent A3 to meet P.W.1 and at that time the alleged occurrence had taken place, absolutely there is no evidence, whatsoever, to prove the same beyond all reasonable doubt. The Trial Court, after appreciating the entire evidence, has rightly come to the conclusion that the prosecution has miserably failed to prove the guilt against the accused. Therefore, the learned counsel for the respondents/ accused prayed for dismissal of the appeal.

8. Considered the rival submissions made by both sides and perused the materials available on record.

9. The point to be decided in this appeal is whether the charges framed as against the accused have been proved by the prosecution beyond reasonable doubt?

10. The genesis of the Crime originated from Ex.P2, information said to have been given by P.W.1. On a careful

perusal of the evidence of P.W.1 with whom it is alleged that the accused conspired together and demanded ransom, it is seen that when he was in lodge on 07.5.2002, A4 came to his lodge and enquired about him and handed over Ex.P1, letter purported to have been written by A1 demanding a sum of Rs.20,00,000/- to meet out the expenses in a criminal case. Since P.W.1 did not know about A1, he asked him to come on the next day and at that point of time, A4 requested him to return back the letter. However, sensing something fishy, he asked A4 to come to the next day. On the next day, when A4 and other came, they were asked to come inside the lodge but they themselves went saying that they would come on the next day as they had to go to hospital urgently.

11. On 09.3.2002 around 5.30 p.m, the accused came to the lodge and they were talking in a room No.109. At that time, A3 caught hold of P.W.1 and A4 strangulated P.W.1. On hearing the sound, P.W.2 and P.W.3 came to rescue him and all of them caught hold the accused and handed over them to police station along with letter Ex.P1.

12. In this regard, it is to be noted that though P.W.2 and P.W.3 supported the version of P.W.1, when the evidence of P.W.1 to P.W.3 were carefully seen, their evidence is attached with serious artificiality. When a person, who is unknown to P.W.1, came with a letter purported to have been written by some unknown person, immediate reaction of P.W.1 would be to inform the incident to police. Whereas P.W.1 in this case, has asked the said person to come on next day. Even on the next day, on their arrival, P.W.1 did not call for the police. It is alleged that when the said person came next day i.e. on 09.5.2002, P.W.1 expressed his inability to pay the amount and at that time, A3 allegedly caught hold P.W.1 and A4 strangled him. Immediately, P.W.2, P.W.3 and others came to rescue him and handed over the accused to police station. This conduct of P.W.1 in not informing the alleged demand of ransom from the person, who is totally unconnected with him, is highly against the human conduct. Keeping silent without informing the occurrence and the alleged demand of ransom through the letter of some third party, who is wholly unconnected with P.W.1, creates serious doubt about P.W.1's evidence.

13. From the records it is seen that there is a manipulation in the FIR. Timing of the alleged occurrence has been inserted and corrected subsequently. This fact has been admitted by Sub Inspector of Police, who was examined as P.W.13. There was no explanation, whatsoever forthcoming from the prosecution for such manipulation and correction in the FIR.

14. It is further to be noted that P.W.12, the Medical Officer, who examined P.W.1, at the first instance, has also admitted that in the Accident Register, timing has been inserted at 5.30. P.W.12 categorically admitted that he has not made any correction in the Accident Register copy. This fact clearly indicate that the alleged occurrence is highly doubtful in view of the correction and interpolation made in the FIR.

15. It is further to be noted that P.W.12, Medical Officer, who examined P.W.1 at the first instance, did not find any external injuries on P.W.1. The said fact falsify the evidence of P.W.1 that A3 caught hold him and A4 strangled him. If really such a force has been used on neck, there has been some

abrasion or contusion or nail mark over the neck of P.W.1. But nothing is found by the Medical Officer, who examined P.W.1 on the same day. This fact also creates serious doubt about the version of P.W.1 to P.W.3. Admittedly, A3 had lost his one hand and had an artificial limb. When that being so, the theory of prosecution that A3 caught hold P.W.1 forcibly with his hands is highly unbelievable.

16. That apart, the evidence of P.W.1 that A1 allegedly demanded the amount of Rs.20,00,000/- through Ex.P1, letter for meeting out expenses with regard to murder case is also found to be false. When Ex.P1, the alleged letter produced by the prosecution is carefully seen, the said letter shows that A1 was sending his friend's brother and that he will be arranged all facilities regarding the case and he only requested P.W1 to give Rs.20,00,000/-. Letter does not show anything about the alleged threat or extortion as alleged by the prosecution. If really the person is seeking ransom of Rs.20,00,000/- from any third person, who is totally unconnected with him, he would not allow such letter in the hands of other. It is also against the human

conduct. Ex.P1 does not show any incriminate materials to rise an inference against the accused. Admittedly, Ex.P1 is only in the form of request. The manner in which the letter addressed to PW.1 clearly shows that P.W.1 and A1 are known to each other previously. The tenor of the letter clearly indicates that they known each other. Similarly, when Ex.P19, letter allegedly seized by the Investigating Officer is carefully read, the said letter also shows that since nobody was helping A1, he requested P.W.1 to help him. This letter is also in the form of request to collect some amount from P.W.1. Since other friends have been frightened by the act of the police, he has sent those letter through A3. This letter also does not show any incriminating materials to infer that there is a demand of ransom. Therefore, merely because, the hand writing expert found that the letter was written by one and the same person, that itself cannot be a ground to hold that those letters have been written only for demanding ransom from P.W.1.

17. More so, the evidence of P.W.1 to P.W.3 with regard to the manner in which the alleged occurrence took place is also

inconsistent with each other. P.W.1 in his evidence has stated that A3 has caught hold him and A4 strangled his neck. Whereas P.W.2 stated that on hearing the cry of P.W.1, he and P.W.3 came to rescue him. Whereas P.W.3, in his evidence, has stated that since there was a phone call from P.W.1, he went to Room No.109 and at that time he heard the noise of P.W.1. Similarly, P.W.2 in his evidence has stated that P.W.3 also came with him. Whereas P.W.4 stated in his evidence that when A3 and A4 were speaking, he went there. This evidence is contradictory with the evidence of P.W.1 to P.W.3. Further, the conduct of P.W.1, having discussion with persons, who were wholly unconnected with him and who allegedly demanded Rs.20,00,000/- from him, is also highly improbable and is against the normal conduct of human being. No human being would entertain such person in his hotel. All these facts create serious doubt about the entire prosecution version.

18. Apart from that, identification parade has also not been conducted by the prosecution. In fact, identification of A3 and A4 has been done for the first in Court in the year 2005 i.e

after three years from the date of occurrence is also highly unreliable and creates doubt about the prosecution. Merely because investigation is in the hands of CBCID and accused has been arrested and allegedly confession was extracted from them and so called letters were seized from them, that itself is not sufficient to prove the guilt of the accused. Admittedly, the prosecution has failed to prove the alleged extortion and demand with convincing evidence. Whereas, in FIR timing has been inserted. This aspect has not been explained by the prosecution.

19. Further more, there was a delay in sending First information report as well as other documents to Court. Admittedly, police station and the courts are situated very near and one can reach the Court on the very same day. There was no explanation forthcoming from the prosecution side for the delay in sending FIR and other documents to the Magistrate. These delay as well as non furnishing of explanation as to the correction and manipulation made in the FIR and Accident Register, create serious doubt about the prosecution case. The evidence of P.W.1 to P.W.3 is attached with artificiality. Hence,

this Court is of the view that the prosecution has not at all established the charge against the accused beyond reasonable doubt. The Trial Court has rightly appreciated the entire evidence and had come to the correct conclusion that the prosecution has not proved the guilt of the accused beyond reasonable doubt. Hence, the appeal deserves to be dismissed.

20. In fine,

(a) ***The Criminal Appeal is dismissed.***

(b) The judgment of acquittal passed by the learned Additional District and Sessions Judge, Chennai on 23.02.2006 in S.C.No.123 of 2005 is hereby confirmed.

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22..06.2017

Index: Yes/No

Internet: Yes

Speaking order/non speaking order

To

1. The Additional District and Sessions Judge, Chennai
- 2.The Special Public Prosecutor, High Court of Madras
- 3.Record Keeper, Criminal Section, High Court of Madras.

N.SATHISH KUMAR, J.

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**Pre delivery judgment in
Crl.Appeal No.52 of 2010**

22..06.2017

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